NEGLIGENCE—"LAST CLEAR CHANCE DOCTRINE."—Plaintiff a messenger in defendant's railroad yards, was sent to the company's roundhouse for materials. The path thereto led over the tracks of the defendant, on which there was a line of box cars with a detached switch engine some ten feet therefrom with a man in the cab. While plaintiff was attempting to pass under the drawheads of the cars across the path, the switch engine backed against the cars, moving them and seriously injuring him. *Held,* (BROWN and WALKER, JJ., dissenting) that the question whether defendant's engineer knew of plaintiff's danger, or might have known thereof by exercising reasonable care, was for the jury, since the "last clear chance doctrine" applies, notwithstanding plaintiff's negligence, where his danger might have been discovered by exercising reasonable care as well as where it was actually discovered. *Edge* v. *Atlantic Coast Line R. Co.* (1910), — N. C. —, 69 S. E. 74.

The doctrine of "last clear chance"—that the party who last has a clear opportunity of avoiding the accident, notwithstanding the negligence of the other party, is considered solely responsible for it—has been adopted in nearly all jurisdictions. See note, 55 L. R. A., pp. 418-465. Where the accident is due to the failure to exercise ordinary care after the defendant actually discovers the peril, the cases are substantially agreed that the antecedent negligence of the plaintiff will not prevent recovery; but there is considerable difference of opinion as to whether the doctrine should be extended to cases where the peril was not discovered, but might have been by the exercise of ordinary care. In the principal case the North Carolina court takes the view that it should be so extended, and in this it is supported by the following decisions: *Denver City Tramway Co.* v. *Wright* (1910), 47 Colo. 366, 107 Pac. 1074; *Matz* v. *Mo. Pac. Ry. Co.* (1910), 217 Mo. 275, 117 S. W. 584; *Phila. & R. Ry. Co.* v. *Klutt* (1906), 148 Fed. 818; *Louisville & N. R. Co.* v. *Earl's Adm'x.*, 94 Ky. 368, 22 S. W. 607; while the courts in the following cases have refused to so extend it: *San Antonio Tract. Co.* v. *Kelleher* (1908), 48 Tex. Civ. App. 421, 107 S. W. 64; *St. Louis S. W. R. Co.* v. *Cochran* (1906), 77 Ark. 398, 91 S. W. 747; *Sauer* v. *Eagle Brewing Co.* (1906), 3 Cal. App. 127, 84 Pac. 425; *Dotta* v. *N. P. Ry. Co.* (1904), 36 Wash. 506, 79 Pac. 32. The dissenting opinion in the principal case was based upon the view that the engineer owed no duty to plaintiff to watch his movements, and therefore it was improper to submit to the jury the question whether, by the exercise of reasonable care, he might have known of plaintiff's danger.

PARENT AND CHILD—CONTRIBUTORY NEGLIGENCE OF CUSTODIAN IMPUTED TO PARENT.—A boy of six and his sister, who lacked only ten days of being fourteen years old, attempted to cross defendant's tracks while the crossing gates were down. The girl was bright, intelligent, and familiar with the danger; the boy had been intrusted to her care by the father, who had often warned the girl to be careful in crossing railroad tracks. A train, alleged to have been running too fast, struck the children, without warning, and killed them both. The parents sued, apparently, in their own right, for loss of services, though the report is not clear on this point. *Held,* the presumption that the girl was *non sui juris* was rebutted; she was guilty of contrib-

utory negligence, and her negligence was imputed to the father, barring recovery. *Cress et ux* v. *Philadelphia & R. Ry. Co.* (1910), — Pa. —, 77 Atl. 810.

Negligence of the parent in such case bars recovery by him. *Berry* v. *St. L., M. & S. E. R. Co.*, 214 Mo. 593, 114 S. W. 27. See also *Feldman* v. *Detroit United Ry.*, — Mich. —, 127 N. W. 687, discussed in 9 MICH. L. REV. 165. But intrusting a young child to an older sister is not negligence. *Cameron* v. *Duluth Superior Traction Co.*, 94 Minn. 104, 102 N. W. 208; *Jones* v. *United Tr. Co.*, 201 Pa. St. 346, 50 Atl. 827. Hence recovery for the loss of the younger child could be denied only on the ground that negligence of the custodian is negligence, *per se*, of the parent. Cases decided on this point are few; and these are in conflict. One view is that a busy parent who puts the child in charge of a competent custodian thereby performs his duty of protection, and such custodian's negligence does not relieve the defendant of liability for his wrong. *Walters* v. *C., R. I. & P. R. Co.*, 41 Iowa 71; the other, that to secure proper care of the child, the parent should be held to the most rigid accountability for its safety. *Bellefontaine, etc. Ry. Co.* v. *Snyder*, 24 Oh. St. 670, approved in *Atlanta, etc., Ry. Co.* v. *Gravitt*, 93 Ga. 369, 20 S. E. 550, 44 Am. St. 149, though that case held that negligence so imputed to the father did not bar a suit by the mother. And if the accident is avoidable in spite of the custodian's negligence, the action will lie. *Baltimore, etc., Ry.* v. *McDonnell*, 43 Md. 534.

RAILROADS—AGREEMENTS CONCERNING STATIONS.—P. in 1880 conveyed a tract of land of over one acre to one of the companies preceding D. as the owner of a certain railroad. The deed specified that the depot was to be built no closer to the street than twenty feet, and a farther distance if possible. D. in breach of the provision, built the structure right on the street and obstructed the view from P's residence, to prevent which the stipulation was made. Suit for damages. *Held*, that P. could recover damages for the breach of contract, and that the particular agreement which limited the right to construct a depot on the tract only in a particular way, was not invalid as against public policy. *Lexington & B. S. Ry. Co.* v. *Moore* (1910), — Ky. —, 131 S. W. 257.

Agreements concerning the establishment and maintenance of depots by a railroad company under certain conditions at certain points have given rise to widely divergent opinions. A promise that the railroad company will construct and use a depot at a certain place, made upon a valid consideration, is not void as contrary to public policy if not prohibitory of some other place. *Lyman* v. *S. R. Co.*, 190 Ill. 320; *L. N. A. & C. R. Co.* v. *Sumner*, 106 Ind. 55; *Mo. Pac. R. Co.* v. *Tygard*, 84 Mo. 263; *Atlanta & W. P. R. Co.* v. *Camp*, 130 Ga. 1. An agreement by the corporation to locate and maintain a station at a given point is contrary to the policy of the law since the general welfare and good of the public might be sacrificed to subserve the private interest of mere gain. *Enid Right of Way & T. Co.* v. *Lile*, 15 Okla. 317; *Pac. Ry. Co.* v. *Seely*, 45 Mo. 212; *Burney* v. *Ludeling*, 47 La. Ann. 73; *Fuller* v. *Dame*, 18 Pick. 472; *Currie* v. *Natchez, J. & C. R. Co.*, 61 Miss.